

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:PEN:PIT:TL-N-4706-00
EJLaubach

date:

to: Pamela Fossi
Revenue Agent, Employment Tax Group

from: Associate District Counsel, Pennsylvania District, Pittsburgh

subject: Proper Caption Following Merger of [REDACTED] and [REDACTED]
[REDACTED]

re: [REDACTED]
EIN: [REDACTED]

You have requested our advice:

ISSUE

What is the proper caption which should appear on consents to extend the statutory period for assessment of employment taxes, closing agreements, and other documents for [REDACTED] after it was merged into [REDACTED].

CONCLUSION

The proper caption for [REDACTED] on consents to extend the statutory period for assessment of employment taxes, closing agreements, and other documents should be "[REDACTED] (EIN: [REDACTED]), as successor in interest by merger to [REDACTED] (EIN: [REDACTED])." The language which you have proposed however is acceptable. The transferee consent to extend the statutory period of assessment can also be used as additional protection.

DISCUSSION

[REDACTED] was a wholly owned subsidiary of [REDACTED] and was part of the [REDACTED] consolidated group for income tax purposes.

On [REDACTED], [REDACTED], a Delaware corporation, was merged into [REDACTED], also a Delaware corporation,

under Delaware law. This merger was treated as a tax free reorganization under sections 368(a)(1)(A) and 368(a)(1)(D) for federal tax purposes. Each share of the [REDACTED] stock was canceled as a result of the merger.

. Revenue Agent Pam Fossi is conducting an employment tax audit of [REDACTED] for the year [REDACTED]. She has sought our advice how a consent to extend the statutory period of assessment for employment taxes, as well as other related documents such as closing agreements, should be captioned now that [REDACTED] has merged into [REDACTED] and is no longer in existence. She has proposed using "[REDACTED], as successor in interest, by way of merger, to [REDACTED]." She has also suggested the use of a transferee consent agreement, Form 4016, as well in this case.

We first must recognize that the consolidated return regulations do not apply here because the tax liability in issue is employment taxes and there cannot be a "consolidated" employment tax return filed. Thus, [REDACTED], the common parent of [REDACTED] and [REDACTED] for income tax purposes, cannot sign a consent for [REDACTED] for employment tax purposes even though it can sign consents for these entities for income tax purposes.

[REDACTED] is however primarily liable for the prior debts of [REDACTED]. Under Delaware corporate law, 8 Del. C. § 259(a), the survivor of a merger becomes liable for the debts of the corporation that went out of existence. Thus, any consent to extend the statute of limitations on assessment on employment taxes or other related documents should read, "[REDACTED] (EIN: [REDACTED]), as successor in interest by merger to [REDACTED] (EIN: [REDACTED])." The language proposed by the revenue agent in this case is therefore acceptable.

With respect to the proposed transferee consent, Form 4016, we believe that such consent is not required because [REDACTED] is primarily liable as a result of the merger. But this transferee consent can still be used as an additional protective measure.

If you have any questions, please call Attorney Edward J. Laubach, Jr. at 412-644-3443.

EDWARD F. PEDUZZI, JR.
Associate District Counsel